

1348

No.

4015

United States
Circuit Court of Appeals
For the Ninth Circuit.

QUONG DUCK,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court, for the Southern District of Cal-
ifornia, Southern Division.

FILED

APR 20 1923

F. D. MONKTON,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Plaintiff in Error:

R. G. RETALLICK, Esq., Fresno, Calif.;

For Defendant in Error:

JOSEPH C. BURKE, Esq., United States Attorney;

HERBERT N. ELLIS, Esq., Special Assistant
United States Attorney.

United States of America, ss.

To The United States of America and to The United States Attorney for the Southern District of California.
Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 27th day of January, A. D. 1923, pursuant to a Writ of Error filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action numbered 668 Criminal, wherein Quong Duck is Plaintiff in Error and you are the Defendant in Error and you are required to show cause, if any there be, why the judgment and sentence given made and rendered against the said Plaintiff in error as in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable (Signed) Oscar A. Trippet United States District Judge for the Southern District of California, this 29th day of Dec., A. D. 1922, and of the Independence of the United States, the one hundred and forty seventh.

Oscar A Trippet

U. S. District Judge for the Southern District
of California.

[Endorsed]:

668 Cr. N. D. IN THE UNITED STATES CIR-
CUIT COURT OF APPEALS for the NINTH CIR-

CUIT QUONG DUCK, Plaintiff in Error vs.
UNITED STATES OF AMERICA, Defendant in
Error. Citation Copy of within citation received
the 29th day of December 1922. Joseph C Burke
United States Atty Herbert N. Ellis Special Asst.
U. S. Atty. FILED DEC 29 1922 CHAS. N.
WILLIAMS, Clerk By W. S. Tufts, Deputy
C L R Bk.

United States of America, ss.

The President of the United States of America,

To the Judges of the District Court of the United
States, for the Southern District of California,
GREETING:

Because in the record and proceedings, and also in
the rendition of the judgment of a plea which is in
the said District Court, before you between The
United States of America, Plaintiff and Quong Duck,
Defendant, No. 668 Criminal, Northern Division, a
manifest error hath happened, to the great damage of
the said Quong Dick as by his complaint appears, and it
being fit, that the error, if any there hath been, should
be duly corrected, and full and speedy justice done
to the parties aforesaid in this behalf, you are hereby
commanded, if judgment be therein given, that then,
under your seal, distinctly and openly, you send the
record and proceedings aforesaid, with all things con-
cerning the same, to the United States Circuit Court
of Appeals for the Ninth Circuit, together with this
writ, so that you have the same at the City of San
Francisco, in the State of California, on the 27th day

of January next, in the said United States Circuit Court of Appeals, to be there and then held, that the record and proceedings aforesaid be inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

WITNESS, the HON. William Howard Taft, Chief Justice of the United States, this 29th day of December in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the United States the one hundred and forty seventh.

(Seal)

Chas. N. Williams

Clerk of the District Court of the United States of America, in and for the Southern District of California.

The above writ of error is hereby allowed.

Oscar A. Trippet	By.....
Judge.	Deputy Clerk.

[Endorsed]:

668 Cr. N D. United States Circuit Court of Appeals for the NINTH CIRCUIT QUONG DUCK Plaintiff.. in Error vs. UNITED STATES OF AMERICA Defendant.. in Error Writ of Error Copy of the within writ received this 29th day Dec. 1922 Joseph C Burke United States Atty Herbert N. Ellis Special asst. U. S. atty. FILED DEC 29 1922 CHAS. N. WILLIAMS, Clerk By W. J. Tufts. Deputy.

I hereby certify that a copy of the within Writ of Error was on the 29 day of December, 1922, lodged in the office of the Clerk of the said United States District Court, for the Southern District of California, Southern Division, for said Defendants in Error.

Chas N Williams

Clerk of the District Court of the United States for
the Southern District of California.

By R S Zimmerman

Deputy Clerk.

No. _____

Filed _____

Violation: Act of February 9, 1909 as amended,
known as the Opium Act.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA NORTHERN DI-
VISION.

At a stated term of said Court, begun and holden
at the City of Fresno, County of Fresno, within the
Northern Division of the Southern District of Cali-
fornia, on the *furst* Monday in May, in the year
of our Lord, one thousand nine hundred and twenty-
two:

The Grand Jurors of the United States of America,
chosen, selected and sworn, within and for the di-
vision and district aforesaid, on their oaths present:

That QUONG DUCK, whose full and true name,
other than as herein stated, is to the Grand Jurors
unknown, late of the Northern Division of the South-
ern District of California, heretofore, to-wit: on or

about the 26th day of July, A. D. 1922, at the City of Fresno, County of Fresno, within the division and district aforesaid, and within the jurisdiction of the United States and this Honorable Court, did knowingly, wilfully, unlawfully and feloniously, receive, conceal and sell opium prepared for smoking and yen shee, to-wit: about two (2) grains of opium prepared for smoking and about nineteen (19) drams of yen shee, which had theretofore been clandestinely brought and imported into the United States from a foreign country, the said foreign country and the exact time and place of said importation being to the Grand Jurors unknown, after the first day of April, 1909, contrary to law, the said defendant then and there well knowing that the said opium prepared for smoking and the yen shee then and there had been so imported into the United States contrary to law, in violation of the Act of February 9, 1909, as amended, commonly known as the Opium Act;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SECOND COUNT

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further give the Court to understand and be informed:

That QUONG DUCK, whose full and true name, other than as herein stated, is to the Grand Jurors unknown, late of the Northern Division of the Southern District of California, heretofore, to-wit: on or

about the 26th day of July, A. D. 1922, at the City of Fresno, County of Fresno, within the division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, willfully, unlawfully and feloniously facilitate the transportation, concealment and sale of opium prepared for smoking and yen shee, to-wit: about two (2) grains of opium prepared for smoking and about nineteen (19) drams of yen shee, which had theretofore been clandestinely brought and imported into the United States from a foreign country, the said foreign country and the exact time and place of said importation being to the Grand Jurors unknown, after the first day of April, 1909, contrary to law, the said defendant then and there well knowing that the said opium prepared for smoking and the yen shee then and there had been so imported into the United States contrary to law, in violation of the Act of February 9, 1909, as amended, commonly known as the Opium Act;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Joseph C Burke

United States Attorney

Herbert N. Ellis

Special Assistant U. S. Attorney

[Endorsed]:

No. 668 Crim. UNITED STATES DISTRICT COURT, SOUTHERN District of CALIFORNIA NORTHERN Division.

THE UNITED STATES OF AMERICA vs.
 QUONG DUCK INDICTMENT Viol: Opium
 Act. A true bill, R. W Barnwell Foreman.

Filed this 11th day of November, A. D. 1922.
 Chas. N. Williams Clerk. Bail \$5,000.

At a stated term, to wit: The November Term,
 A. D. 1922 of the District Court of the United States
 of America, within and for the Northern Division
 of the Southern District of California, held at the
 Court Room thereof, in the City of Fresno, on Mon-
 day the 13th day of November, in the year of our
 Lord one thousand nine hundred and twenty-two.

Present:

The Honorable OSCAR A. TRIPPET District
 Judge.

United States of America, Plaintiff;	}	No. 668 Crim. N. D.
vs.		
Quong Duck, Defendant.		

This cause coming on at this time for arraignment
 and plea of defendant Quong Duck; H. N. Ellis, Esq.,
 Assistant United States Attorney, appearing as coun-
 sel for the Government; defendant being present in
 court with his attorney J. K. Tuttle, Esq. and de-
 fendant having been arraigned, thereupon said defend-
 ant waives the reading of the Indictment and states
 his name to be as given therein; and, upon being re-
 quired to plead, interposes his plea of NOT GUILTY:
 Now, good cause appearing therefor, it is by the
 court ordered that this cause be continued to Novem-
 ber 20th, 1922 for the trial of defendant in this cause.

At a stated term, to wit: The November Term, A. D. 1922, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Monday the 27th day of November, in the year of Our Lord one thousand nine hundred and twenty-two.

Present:

The Honorable OSCAR A. TRIPPET District Judge.

United States of America, Plaintiff,	}	No. 668
vs.		
Quong Duck, Defendant.		

This cause coming on at this time for trial of defendant herein; Mack Meader, Esq., Assistant United States Attorney, appearing as counsel for the Government; defendant being present in court with his attorney R. P. Rellatik, Esq., Fred Ferguson being also present in his official stenographic capacity as stenographic reporter of the testimony and proceedings and counsel having announced their readiness to proceed with the trial of this cause, it is by the court ordered that this cause be proceeded with and thereupon the court ordered the following twelve names drawn from the jury box, to wit: Wm. C. Kennedy; N. Hanson; F. A. Berg; Jos. L. Beall; Wm. F. Dunn; H. J. Bartram; A. E. Chartrand; Levi McNie; F. M. Roessler; W. C. Ficklin; Ed. Edwards and E. E. Slater;

and

said petit jurors having been called and sworn on

voir dire and passed for cause by the court and by counsel for the respective parties for cause and

Said Ed Edwards having been peremptorily challenged by counsel for the plaintiff and by the court excused; and

The court having ordered the name of one more petit juror drawn from the jury box, said name being J. A. Ward and said J. A. Ward having been called and sworn on voir dire and examined by the defendant for cause and by the court excused; and

The court having ordered the name of one more petit juror drawn from the jury box, said name being C. A. Peters, Jr. and said C. A. Peters, Jr. having been called and sworn on voir dire and passed for cause by the court and by counsel for the respective parties; and

Counsel for the respective parties not having desired to exercise their right to peremptorily challenge the petit jurors now in the box, it is by the court ordered that said petit jurors be sworn in a body as the jury to try this cause; said jury as sworn being composed of the following named petit jurors, to wit:

THE JURY

- | | |
|--------------------|----------------------|
| 1. Wm. C. Kennedy, | 7. A. E. Chartrand, |
| 2. N. Hanson, | 8. Levi McNie, |
| 3. F. A. Berg, | 9. F. M. Roessler, |
| 4. Jos. L. Beall, | 10. W. C. Ficklin, |
| 5. Wm. F. Dunn, | 11. E. E. Slater, |
| 6. H. J. Bartram, | 12. C. A. Peter, Jr. |

Now, at the hour of —o'clock A. M. the court admonishes the jury herein that during the progress of this trial they are not to speak to anyone about

this cause or any matter or thing therewith connected, and that until said cause is finally submitted to them for their deliberation under the instruction of the court they are not to speak to each other about this cause or any matter or thing therewith connected, or form or express any opinion concerning the merits of the trial until it is finally submitted to them and declares a recess to the hour of ten o'clock A. M. November 28th, 1922 at which time the jury herein are instructed to present themselves for further attendance upon this cause.

At a stated term, to-wit: The November Term, A. D. 1922 of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Tuesday the 28th day of November, in the year of Our Lord one thousand nine hundred and twenty-two.

Present:

The Honorable OSCAR A. TRIPPET District Judge.

United States of America, Plaintiff,	}	No. 668 Crim. N. D.
vs.		
Quong Duck, Defendant.	}	

This cause coming on this day for further trial of defendant Quong Duck; H. N. Ellis, Esq., appearing as counsel for the Government; and R. P. Retallick, Esq., appearing as counsel for the defendant; Fred Ferguson being present as shorthand reporter and having been sworn as such; and

Andrew W. Roberts, a witness herein on behalf of the Government, having been called and sworn, and having testified for the plaintiff; and

In connection with the testimony of said witness, the following exhibit having been offered and admitted in evidence, to-wit:

U. S. Ex. 1—Suit cases and contents: Lamp, pipe, bowls, opium, yenshee, etc.;

Now, at the hour of 11:00 o'clock A. M., the court having admonished the jury that, during the progress of this trial they are not to speak to anyone about this case or any matter or thing therewith connected, and that until said case is finally submitted to them for their deliberation under the instruction of the court they are not to speak to each other about this cause or form or express any opinion concerning the merits of the trial until it is finally submitted to them; and the court thereupon ordered that a recess be taken for two minutes; and

Thereafter, at the expiration of recess, Court having reconvened, and counsel, shorthand reporter and defendant being present as before, and it having been particularly noted that the jurors are present, and said jurors all being present in court; and

Andrew W. Roberts, a witness on behalf of the Government, heretofore sworn, having been recalled, and cross-examined by counsel for the defendant; and

Guy Baker, a witness herein on behalf of the Government, having been called and sworn, and having testified on behalf of the plaintiff; and

The Government having thereupon Rested; and

Geo. King Quong and Frank Truax, each having respectively called and sworn, and each of having respectively testified on behalf of the defendant herein; and

Albert H. Won having been sworn as Interpreter of the Chinese language into English and the English language into Chinese; and

Quong Duck, defendant herein, having, through said Interpreter, been sworn as a witness in his own behalf and having testified, and having been cross-examined on behalf of the Government by H. N. Ellis, Esq., Assistant U. S. Attorney; and

The usual admonition as at the morning recess having thereupon been given the jury, a recess is thereupon ordered until the hour of 2 o'clock P. M., of this day;

And now, at the hour of 2 o'clock P. M., the jury having reconvened, and counsel, shorthand reporter and defendant being present as before; and it having been particularly noted that the jurors are all present, and all of said jurors being present in court; and

Defendant Quong Duck, heretofore sworn herein, having resumed the stand, and having testified on cross-examination; and

Joseph Barrett, a witness herein on behalf of the defendant, having been called and sworn, and having testified herein; and

Defendant having thereupon Rested; and

Andrew W. Roberts, a witness on behalf of the Government, heretofore sworn, resumes the stand and testifies herein; and

The Government having thereupon rested; and

H. N. Ellis, Esq., Assistant U. S. Attorney, having thereupon presented argument on behalf of the Government; and

R. P. Retallick, Esq., counsel for the defendant having thereupon presented argument on behalf of defendant; and

H. N. Ellis, Esq., Assistant U. S. Attorney in rebuttal, having argued on behalf of the Government; and

Now, at the hour of 2:45 P. M., the Court having instructed the jury regarding the law of the case; and John Henderson having been sworn as bailiff to care for the jury; and thereafter, at the hour of 3:00 o'clock P. M., the jury retire to the jury-room for the purpose of deliberating upon a verdict, in charge of said bailiff; and

Thereafter, at the hour of 4:00 o'clock P. M., the jury return into the Court Room, and having been asked by the Court if they have agreed upon a verdict, and having, through their Foreman, replied that they have been unable to agree, and are thereupon ordered to retire for further deliberation of a verdict; and

Now, at the hour of 4:20 o'clock P. M., the jury again return into the Court Room in charge of said Bailiff, and having again been asked if they have agreed upon a Verdict, and having, through their Foreman, replied that they have so agreed, and, upon being required to present their Verdict, and having presented their Verdict, which is read by the Clerk,

and by the Court ordered filed and entered herein; and said Verdict as so presented and read being as follows, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA NORTHERN DIVISION

UNITED STATES OF AMERICA	}	668 Crim.
QUONG DUCK		

v

WE THE JURY IN THE ABOVE ENTITLED CAUSE FIND THE DEFENDANT QUONG DUCK NOT GUILTY AS CHARGED IN THE FIRST COUNT OF THE INDICTMENT, AND GUILTY AS CHARGED IN THE SECOND COUNT OF THE INDICTMENT.

FRESNO, CALIFORNIA

NOVEMBER 28 1922

C A Peter Jr

FOREMAN

[Endorsed]:

Filed November 28 1922 Chas N. Williams Clerk
By Louis J Somers deputy.

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA NORTHERN DIVISION. United States of America v. Quong Duck, 668 Crim. We the jury in the above entitled cause find the defendant Quong Duck not guilty as charged in the first count of the Indictment and guilty as charged in the second count

of the Indictment. Fresno, California November 28, 1922 C. A. Peter, Jr. Foreman.

The Court thereupon ordered that the defendant be remanded to the custody of the U. S. Marshal, and that this cause be continued to December 4th, 1922, for the imposing upon defendant of sentence.

At a stated term to wit: The November Term, A. D. 1922. of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the Court Room thereof, in the City of Fresno, on Monday the 4th day of December, in the year of Our Lord one thousand nine hundred and twenty-two.

Present:

The Honorable OSCAR A. TRIPPET District Judge.

United States of America, Plaintiff,	}	No. 668
vs		
Quong Duck, Defendant.	}	Crim. N. D.

This cause coming on this day for the imposing of sentence on the second count of the Indictment: H. N. Ellis, Esq., Assistant U. S. Attorney, appearing as counsel for the Government; R. P. Rettalick, Esq., appearing as counsel for the defendant, and having made a statement in mitigation of sentence on behalf of the defendant; and defendant having thereupon been called for the imposing of sentence upon him for the offense of which he now stands convicted, namely: Violation of the Opium Act as amended, and the judgment of the Court is that the defendant pay unto the United States of America a fine in the sum of \$1000.00,

and stand committed to the United States Penitentiary at Leavenworth, Kansas, until said fine is paid or he be discharged by due process of law, and that he be confined in said Penitentiary for the term and period of five (5) years; the sentence of five years imprisonment to begin at the expiration of sentence imposed herein on defendant for non-payment of fine assessed against him; and defendant is thereupon remanded to the custody of the U. S. Marshal, and it is ordered that the narcotics, pipes, etc., be turned over to the Board of Narcotics.

5/487

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA NORTHERN Division.

UNITED STATES OF AMERICA,	}	No. 668
Plaintiff,		
vs.		
Quong Duck Defendant.		

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original JUDGMENT entered in the above -entitled cause; and I do further certify that the papers hereto annexed constitute the JUDGMENT ROLL in said cause.

ATTEST my hand and seal of said District
(Seal) Court, this fifth day of February A. D. 1923

CHAS. N. WILLIAMS Clerk.

By Louis J Somers
Deputy Clerk.

[Endorsed]:

No. 668 Crim. IN THE DISTRICT COURT OF
THE UNITED STATES for the Southern District
of California NORTHERN DIVISION. United
States of America, Plaintiff, vs Quong Duck, Defend-
ant. JUDGMENT ROLL Filed February 5, 1923
Chas N Williams, Clerk By Louis J Somers Deputy
Clerk Recorded Min. Book No. 5 Page 487

IN THE DISTRICT COURT OF THE UNITED
STATES, FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
NORTHERN DIVISION.

THE PEOPLE OF THE)	
UNITED STATES OF)	
AMERICA,)	
Plaintiff.)	
vs.)	INDICTMENT FOR
QUONG DUCK,)	
Defendant.)	
- - - - - x	

BILL OF EXCEPTIONS.

BE IT REMEMBERED, That the above entitled
cause came on for trial on the 28th day of November,
1922, being one of the days of the November Term
of said Court, before the Hon. Oscar A. Trippett, one
of the judges of said Court, and a jury duly impan-
elled.

(Testimony of Andrew Roberts.)

Herbert N. Ellis appeared as Counsel for the Government, and R. G. Retallick appeared as Counsel for the Defendant.

The Government to maintain its case offered the following evidence to-wit:

Witness

ANDREW ROBERTS

sworn and examined on behalf of the Plaintiff testified in the following manner:—

I am a Federal Narcotic Inspector and arrested the defendant in this case, Quong Duck at 4:00 P. M. on the 26th day of July, 1922, at 1016 China Alley in the City of Fresno. We procured a search warrant and entered the premises at 1016 China Alley and after some difficulty in entering due to the fact of the secret buzzers and doorways, finally entered the inside room. The door has several latches on it. It is about four inches thick, has a little peek *hold* so that one sitting at a desk with a cord underneath may, if the proper signal is given, pull the cord and open the door. Not having the proper signal we forced the door, and upon entering the premises found the defendant Quong Duck sitting on a stool at a desk with the drawer partly open. He endeavored to close the door and I took him away from the desk. At the time I found Mr. Gee Lee and Mr. J. K. Quon, - Mr. Quon is now in the court room, in the large room. The room was so laid out, it had the usual mats, boards, kind of all around the room."

(Testimony of Andrew Roberts.)

At this point Counsel for defendant objected to the manner in which the witness was testifying, and his objection was allowed. Witness proceeds:—

“There was a sort of platform about three feet in height all around the room and Gee Lee and J. K. Quon, when we first entered were reclining on that platform. I immediately stepped over to Mr. Gee Lee, and by his side was an opium pipe, which was still burning. I took the defendant and brought him over to the other two men, and placed him in charge of a Mr. Anderson who accompanied me in entering with Officer Brown. Mr. Anderson is now in the hospital in the City of Fresno and unable to be here. I asked the two men, Mr. Quon and Mr. Lee, not who was the proprietor, but who was the “bossy man,” which they would understand. *The* both pointed out the defendant. When we first entered, I asked the defendant if he was the “bossy man.” He said: “Other bossy man go away. I bossy man now.” That was before we had found any narcotics. I searched the defendant, and as I went to search him over part of his body, he had one hand in his pocket, and he dropped two keys through his pants. I saw it going down and got it as it reached the floor when he went to put his foot over on it. I asked him if those were his keys. He made no answer. I then told him, I says: “we found no opium yet.” “Oh,” he says, “yes, those are my keys.” Then we searched the premises thoroughly. Those keys we fitted to the front door and the door between. We searched the main room,

(Testimony of Andrew Roberts.)

under the flooring and in the walls and behind a lot of rags and different kinds of tins, we found quantities of yenshee. We searched the drawer that he had open when we entered and we found a small jar of opium. We searched the back rooms and we found concealed under other rags some yenshee. Here (producing a package) are the pipes which were on the platform around the room. This pipe to which the opium is still adhering is the pipe that was used by one of the men, Gee Lee, it was right next to him - the opium pipe. All these pipes are in the course of construction. These are called gee hocks, used for cleaning opium pipes. I have the opium and yenshee there and will bring it."

Here the witness produced opium and yenshee, which was stipulated to be opium and yenshee by Counsel for defendant. Witness produces a suitcase and proceeds:

"This is an opium lamp. These are opium bowls found in the main room, and these are gee hocks for cleaning pipes. Opium lamps used for cooking. This little can was for the residue, is still attached, still adhering to the sides. Parts of opium lamps. These are what is known as gee rags for cleaning pipes. Parts of lamps. These are decks of cards. This deck of cards upon which the residue of the opium is still adhering, which is sold at so much a card. There is a whole deck there. It is sold at so much a card to the opium fiends. Parts of opium pipes and cleaners. These are used to place the warm opium when it is

(Testimony of Andrew Roberts.)

about to be used. This is a quantity of yenshee, this was found with a quantity of opium in the drawer at the time we entered, - where the defendant sat."

Here the yenshee is shown to the jury.

"These are some more pots of opium lamps. These two smaller bowls were found in the outside room concealed under a lot of rags and tins. There is a room in back of the main room. These two here. There is yenshee in these two packages. Yenshee is the residue of opium which has been smoked, a preparation of opium. They smoke it again, your Honor. Then they smoke it again, sometimes, the third time, but this has been smoked unless it is a good quality of yenshee. This is also yenshee that was also found in the room back of the main room.

There is a passageway from the main room into that room. Then you turned a couple of times and got into it. There was a door between and it was open. Just a sort of anteroom to the main room. The main room was the room we entered. I have some more stuff here. These are the keys which the defendant dropped through his pocket and on to the floor, which I picked up as it was reaching the floor, as it went through his pants. They fit the premises, fit the front room also the door between. The premises is 1016 China Alley. We tried the keys in the presence of the defendant after he admitted they were his keys, and then he denied after they fitted that they were his keys. This is a quantity of yenshee that was found concealed under a lot of rags."

(Testimony of Andrew Roberts.)

MR. ELLIS: I think in view of the stipulation it is opium and yenshee that we can pass that up. I ask they be received in evidence.

THE COURT: Let them be marked in evidence.

MR. ELLIS: The suitcase and contents being marked Exhibit 1. (Said suitcase and contents received in evidence and marked U. S. Exhibit No. 1.)

MR. RETALLICK: I wish to have an objection interposed to the ruling on the ground it is incompetent, irrelevant and immaterial; that no connection has been shown between the defendant and the exhibits offered.

MR. ELLIS: It was all taken right from the premises of the defendant.

THE COURT: That is all true.

Exception No. 1.

MR. ELLIS: The grand jury is ready to report now, your Honor.

THE COURT: Let the Marshall vacate the first two rows of seats on the side. Proceed with the trial Mr. Ellis.

MR. ELLIS: Now, was anyone else with you there?

"Narcotic Agent Brown was with me there also. He is now in San Francisco, confined with an infected eye, in the hospital. Mr. Bacon was also with me. He is now in the court room and Mr. Anderson. Mr. Anderson is at the present time in the City of Fresno. After I had found the keys, he then denied that they were his keys; that is after I found the narcotics. I

(Testimony of Andrew Roberts.)

asked the defendant how long he had been conducting this place and he refused to answer."

Counsel for Defendant R. G. Retallick, objected to the following question:

"Did you have any more conversation with the defendant Quong Duck about this stuff?" on the ground that no proper foundation has been laid for it. There has been no questions asked to show whether or not there were any threats made, any inducements or promises or reward, and they appear to be in the nature of confessions.

MR. ELLIS: The objection is well taken. Before you entered the place -- at the time you entered and interviewed him, did you make any threats to him?

"I made no threats, but on the contrary, I told him whatever any statement he made to either Narcotic Agent Brown or myself might be used against him. I promised him no reward or immunity from punishment and so far as I observed these statements were free and voluntary."

Counsel for defendant makes further objection and suggests that it might be shown who was present.

"Narcotic Agent Brown and Mr. Baker were present. Mr. Baker is in court now. I took a hat off the wall, which was right a few feet from the defendant on the right hand side as he sat at the desk, on the wall. I asked him if it was his hat and he said no. I placed the hat on his head and it fitted him. I then handed the hat to one of the other men, the Chinese. I told them as long as it is not the defend-

(Testimony of Andrew Roberts.)

ant's hat you can have it. Then the defendant spoke up and said it was his hat. That was right next to the desk, as I entered the defendant was seated, opposite the doorway, in front of the doorway, out of which I took the Yenshee and small jar of opium within reach of the string which opened the door entering into the smoking room. That is approximately all the conversation which I had with the defendant. The platform which I mentioned was about four feet wide all the way along the two sides of the room. The furthesc end of the room, towards the room in which I found the other yenshee was a big stove; in that stove were different refuse, one thing and another. From the rooms and under the platform, on the opposite side of the room, under the platform upon which Gee Lee and J. K. Quon were reclining, we found some of the yenshee concealed under some rags beneath the floor. It was what we call a plant. It was tongue and groove flooring, but we could see the places where the boards were loose. We pulled up the boards and found yenshee concealed under the boards. The room was, I should say about 18 x 18. Not a large room. There were--let's see--no, no windows I remember of. There was a partition to which the door which entered into the room was connected, about 7 foot, and then there was a little bit of light over that partition, but the room was apparently dark; it was a room, what we call an inside room; have to keep the lights burning in the daytime. To gain access to this room you had to go through

(Testimony of Andrew Roberts.)

this heavy door. No other way of entering those premises unless you come in by a devious passage near the back, which we couldn't find any way of getting into it except by means of the back door. We don't want to get in the wrong place, it called for 1016 China Alley.

It seems to me this was a one story building. The front part of it is a store with a lot of shelves, lot of empty boxes. No stock carried in there at all. We searched thoroughly in front and found no stock. The neighborhood around there is inhabited by Chinese entirely, it is Chinatown. There was business places on both sides of the street, and this, from the outside, it looks like a business place, and on entering there is no stock in there. We found no stock in there, no goods of any kind I mean. There is a place in back where you might cook food, and we found a lot of empty kitchen utensils, dishes and so forth, all you might say in a condition, they hadn't been used for some time; in fact, things in this place were quite filthy; had to be very careful how we handled them. I didn't see any food except a little bit of rice on the sink."

The last of above was in answer to the following question "Was there any food stuff there?"

MR. RETALLICK: We object to that question; immaterial whether or not there was food.

THE COURT: Objection overruled.

Exception No. 2.

MR. ELLIS: Did the defendant accompany you on your search?

(Testimony of Andrew Roberts.)

"The defendant did not accompany me in the search of the back room, but he was personally present when I searched the large room, and the front room. He was detained in the center or large room, ~~and~~ with his two visitors which we also arrested. We saw several places, hidden crevices in the walls, and places, which showed evidences of having been used for caches or plants of narcotics."

Mr. Retallick, counsel for Defendant asks that the last be stricken out to which the court consents.

"The wall, upon sounding it, it would *found* that there was a loose tongue and groove board, and on prying that open and reaching your hand in, and using your flash light, you found where there was a little partitioned place across for the purpose of holding - -

Mr. Retallick asks that it all be stricken out, to let the witness tell what he found, to which the court answered that he should tell what he found there, not what he did.

"On the platform which is built around the room, there were sleeping blocks; their sleeping block is made out of a square piece, that is oblong piece of wood about 12 to 14 inches in length, about six inches in height, about four inches in thickness, which is carved out in a half circle, so that one may, if they wish to recline that way, may put their head in - -"

Mr. Retallick objects again saying that the first is all right, and the court states the block is all right but for the witness to leave out his opinion.

(Testimony of Andrew Roberts.)

"Under the platform, on the right hand side as we entered the room, concealed by the platform, under a lot of rags and tins and different kinds of things, by pulling out those rags, we found two or three tongue and groove boards, which were loose. On prying that up, we found more rags, and by flashing our flash lights in there and pulling out those rags, ~~and by flashing~~ we found yenshee concealed under those rags in the front room. That opening was about 14 x 16 inches, but it extended for some six or seven inches underneath, so you have to put your arm under the tongue and groove. I put my arm under and pulled out the rags and different papers, and found the package of yenshee concealed there. This was the one opening leading into this place through which you would be obliged to put your arm to extract anything from it. It was a little receptacle underneath.

These openings were different sizes. We found them in the walls of the place; in fact in the front, in the store, we found some places which were what we would call false walls, and on the left alongside, near the desk at which the defendant sat, we found a couple of loose boards; it was a little bit large place underneath; I won't express my opinion, it is quite a large place under there. I should say it ran along a couple of feet underneath between the hoists; the joists were severed under there so you could run under *father* than the usual distance between joists. The tongue and groove was over this opening. By pulling

(Testimony of Andrew Roberts.)

up this tongue and groove -- There was just the second flooring underneath with a lot of papers laid on the bottom, and then a lot of cards, and pieces of boards that are found in such places, in those caches."

MR. ELLIS: Now, was there anything on the outside of these openings, fastenings of any kind to indicate there was anything in there?

A. No.

MR. RETALLICK: I object to the question, leading and suggestive.

A. No there was nothing.

THE COURT: Overruled.

Exception No. 3.

A. The tongue and groove boards were very closely fitted together.

MR. RETALLICK: I object. That is not an answer to any question.

THE COURT: Overruled. You have the description of this place enough.

MR. ELLIS: I think so then.

MR. RETALLICK: May we have an adjournment for about two minutes. I don't like to stop in the middle of my cross examination.

THE COURT: Well, remember the admonition, gentlemen, heretofore given you. Take a recess for two minutes.

After recess Mr. Retallick requests that the blackboard be brought forward, and proceeds with his cross examination of the witness.

Witness is called forward to draw floor plan.

(Testimony of Andrew Roberts.)

MR. RETALLICK: Now would you come to the blackboard and give the jury an idea of the floor plan of this place? (Witness proceeds to draw.

"This would have to be inverted, 1016 is on the right hand side of China Alley. This store 1016 China Alley, two doors. The dividing door, that is the center there. You enter that door, you turn to your left as you enter I found a passageway leading to a large solid door, about four inches thick, and in that door is a peek hole about four inches square. I have to figure out just how you go in there."

The court object to witness taking the time of the jury to make the plan and states that it will sustain an objection to so doing. Mr. Ellis makes such objection but it is not acted upon and Mr. Retallick proceeds with rough plan, assisted with suggestions from the witness.

"The store room is in front there, that is what purports to be a store room in front, and it was from all appearances. From the back end of the store there is a little narrow passageway which you might call a hallway, and yes there is a small room on the side there. Also there is wainscoating along this side of that small room if my memory serves me correctly. We tore out some of the wainscoating. We didn't find any opium there but found a plant where there had been opium. Found a place where the boards were loose; pulled out those boards and found a receptacle, but didn't find any opium or its derivatives there. There is a heavy door, which I have

(Testimony of Andrew Roberts.)

described to the jury, and before you enter the back room you must enter the large room. You don't go through the hall way there no, turn to your left and you find yourself confronted by a four inch door there. Have to turn to your left, through a small room, through the passageway, you are confronted with a heavy door. You couldn't go from that small room into the large room. This room here is where I found the Chinamen.

I found all this stuff concealed under the right hand side; there was a platform running around down this side and running down this side. We found a place, loose boards there. We found in the drawer of the little desk, which is right directly as you come in, after you come around from that large door, found the jar of opium. Found the jar of opium in the little drawer, also found the jar of yenshee, and found a package of yenshee under this platform, under some boards, some tongue and grooved boards, which were closely fitted up. No, not all of that stuff with the exception of the pipes were concealed in these various concealing places, the gee rags and the gee hocks and the pipe cleaners, bowls and some of that weren't concealed. The jar of yenshee and the jar of opium were behind some other packages in the drawer concealed. The drawer was in front of the defendant when we entered. He was seated at a little desk with his hat off. The drawer was in -- you can't call it a desk. It was a little counter, and that drawer had a lock

(Testimony of Andrew Roberts.)

on it; it wasn't locked, it was partly opened, and the defendant, as I testified, tried to close that drawer.

I was not the head of this expedition, there was no head, Mr. Brown and myself worked in conjunction. With me were Mr. Brown; Mr. Baker and Mr. Anderson."

Mr. Ellis objected to the question as to whether they went in there suddenly, on the ground that it calls for the conclusion of the witness.

"We went into the front door rapidly. We found it necessary to force the large door, which we could not get in without forcing the larger door. Both of us tried the door and neither of us could open it without forcing it. Both of us tried the second door. In the immediate presence of these men there were three Chinese, Gee Lee J. K. Quon and the defendant Quong Duck. We only found in their immediate presence one pipe, also these two here and the gee hocks and gee rags, and these lamps were also found in the presence of the defendant, and the lamp chimneys, and the yenshee. Unhidden and in plain sight out there ~~you~~ we found the pipe, next to Gee Lee, on the platform, not next to the defendant as the defendant was seated at the desk.

The only hat in the premises was the hat on the wall which fitted the defendant, and which he afterwards admitted was his. It is an imitation panama.

"Yenshee is opium that has been smoked, once, and it is sold then for smoking purposes. I can tell by looking at it whether it has been smoked more than

(Testimony of Andrew Roberts.)

once or not. That is yenshee; in other words, it is yenshee or another Chinese name, which I can't pronounce, which means it has been smoked over once, been smoked over once, but yenshee has only been smoked once. That has only been smoked once. I can tell by a fire test, burn it to get the fumes, also by the feel and by the smell. An opium joint usually has opium and gum opium for smoking, and the yenshee, that is for the poorer class of trade.

Narcotic Agent Brown was with me, he is now in the hospital with an infected eye. He is at San Francisco at the Morton Sanitarium. He has been in and out of it two or three times. His eye seems to get better and then the cold sets in and he goes back again. He doesn't merely go there for treatment, he is actually in the hospital and was there when I left the city some days ago. He may possibly have gone home by this time. Mr. Baker was with me and he is in court now. Mr. Anderson is a resident of the City of Fresno, Mr. Baker can tell where he lives, he is a brother-in-law of Bakers. According to what I found out this morning he is also in the hospital. Mr. Baker could inform you what hospital he is in.

I have been a Narcotic Agent for some time. Fresno has been part of my territory. Take in five states, and I have been down here numerous times. I knew nothing about any arrests made by the police and knew nothing of what had been done by the police.

There were four of us altogether. I questioned the defendant in the presence of the other gentlemen;

(Testimony of Guy Baker.)

some of the questions Mr. Baker didn't hear, because he was assisting Narcotic Agent Brown in the outside rooms, while I was questioning the defendant in the presence of Mr. Anderson. The first thing I did when I got in the room where the Chinese were was to take the defendant away from the drawer, which he was trying to close. I brought him over to the other two, Gee Lee and J. K. Quon so there couldn't be any interference and handcuffed them together. As soon as we came in we saw the pipe and smelled the fumes was the fumes of opium. The conversation I had with the defendant was after I had already handcuffed him. There was absolutely no threats made against this defendant, or some other Chinese there. We did Arrest the other two Chinamen charged them under the state law with visiting an opium joint."

Witness Roberts was then dismissed and Witness

GUY BAKER

called, sworn, and examined as a witness on behalf of the Plaintiff, and testified as follows:

"My name is Buy Baker and I live in Fresno. I went with Mr. Roberts to 1016 China Alley, that was the first time I was there. We forced the front door. Mr. Brown and Mr. Roberts told Mr. Anderson and myself to watch the front door and not let anyone out, and then pretty soon, about five minutes after they called us into the other room. These two Chinamen were handcuffed there together. I did not hear any conversation at the time, and not until after they found

(Testimony of Guy Baker.)

the keys. I was there when they found the keys. They found them at Quong Duck's feet and he was standing up. I saw Mr. Roberts pick up these keys and heard him ask the defendant if they belonged to him; I think he said no. He said, no, anyway. I went and tried the keys and found they fitted the door and after that I gave them back to Mr. Brown or Mr. Roberts. I did not hear anything said to the defendant about these keys fitting the door or about what he was doing there. I heard the defendant deny owning the hat and the keys; that was about all I heard from him.

I first went into the room, the first thing I saw was Mr. Roberts stoop over and pick up the keys. He asked Quong Duck if they belonged to him and he said no. Then he had me try the keys, and I came back and told him that they fitted. I told him in the presence of the defendant. Then after he said they didn't belong to him, Mr. Roberts kept the keys to see -- . After Mr. Brown had found the pipe, I suppose found it when they went in the first place. I didn't see him pick it up. I saw them find those rags he spoke about under the floor. I saw some yenshee there, wrapped up in rags. I didn't see any opium. I wouldn't know it if I saw it anyhow. My first experience. All that stuff there was in there. The cards were in the drawer in the desk, I saw them, and the stuff on the cards as it is now. We didn't stay in the room where these three men were handcuffed together, Mr. Brown and myself went into the front

(Testimony of Guy Baker.)

room and was searching in there. We didn't find anything. Then we went back into the large room, and searched there but didn't find any more after that that I saw. I don't remember much about it at all, it was my first experience and I was nervous.

I saw where the opium was found, under the bed on the platform, I don't know what you call it, on the south side of the room, in a little place they call plants, and they broke the boards and reached underneath and pulled out the rags. It was in the floor, a part of the floor where this opening was, and they found the loose boards there and pried those open and found these rags underneath. There were about three or four of such places there. I didn't hear the defendant say anything more about the keys."

Mr. Retallick objected to the question of whether or not witness heard him say they belonged to him on the ground that it was leading and suggestive and objection was sustained.

"No one went with me to the door to fit the keys. The defendant was in the large room. I had to go through the little passage then out to the front; I told Mr. Roberts they keys fit, I whispered it to him and then he told Quong Duck they didn't fit then Quong Duck owned up they were his. Mr. Roberts said it loud enough so that I heard what he said to Quong Duck. Quong Duck spoke broken English. All I remember now I have stated. Right at the time I was nervous when I went in there; I was new, I didn't know what was going to happen; I remember seeing

(Testimony of Guy Baker.)

the hat there, that was the only hat I saw. A straw Panama hat. He said it didn't belong to him. I heard that much. That was right after they found the keys that he first spoke about the hat to me; after they found it, and then this hat was hanging on the wall to the north of the room. The other men there did not claim the hat. After the other fellows were going to take the hat he admitted that it was his hat."

Upon cross examination conducted by Mr. Retallick, counsel for the defendant, the witness Guy Baker testified as follows:

"There were more keys tried in the doors than those two. Some of the Chinese present handed them keys and they were tried in the door. Mr. Roberts asked for their keys. He found the defendant's keys at his feet. He also asked him for some keys. Both of the Chinese handed him keys, and they were tried but didn't fit. Afterwards the keys that were found on the floor were tried and those were the keys that fitted. I saw the defendant trying to cover the keys with his feet, tried to get them under his feet, stand with both feet together. The first time I saw them they weren't on the floor, down between. Mr. Roberts picked them out of there, I don't know how they got there. I didn't see them very clearly before he picked them up. I saw him pick them from his feet. Just reached over and picked them up there and held them by the string. Picked them up very close to his feet. They were on his feet, not between his shoes. Standing with his feet together he tried to drop them

(Testimony of Guy Baker.)

in between. I saw them in between his feet. The front door was all I went through until after they had these other three handcuffed. Along towards the last everything was pulled down from the shelves and a very thorough search made, that was the last thing they did. The last thing was to search the front room. The first thing that was done was to search the room where the Chinamen were and in the course of the search everything was pulled down on the floor. There was a lot of junk there, old cans, old rags, old sacks and stuff that is junk and nothing else pulled down and scattered over the floor in the course of the search. One of the men stood by these Chinamen after they were handcuffed. No one, myself or any man present, threatened these Chinese, nor did they use any rough language to them whatsoever. Not exactly polite language, but it wasn't rough, and no threats were made. I am sure there were no threats made, just questioned them. All the conversation had was had after this defendant and the other men there had been handcuffed together."

Mr. Retallick dismisses the witness and Mr. Ellis the counsel for plaintiff exhibits the keys (part of U. S. Exhibit 1) to witness.

"Yes, those are the keys I tried that fit the door there, and they are the keys concerning which I testified that I saw at the feet of the defendant. He picked them up right in that way."

THE COURT: Hand those keys to the jury, they may want to look at them.

MR. ELLIS: The United States rests.

(Testimony of Gee King Quon.)

DEFENSE.

GEE KING QUON

called, sworn and examined as a witness on behalf of defendant, testified as follows:

"My name is Gee King Quon. I come to this County in July 23, 1922. I lived at Oakland before I come here. I come over, I live in hotel - - what you call that street - - Tulare Street. I do laundry business for a living. I was in this place at 1016 China Alley on the 29th day of July when this defendant was arrested. I passed the China alley and I see my friend Sing Kee, and he stand out in front his store, outside his door, and he say to me, "Gee King Quon when you come in this town?" I say "I come in this town about four days." I says: "Such a hot day." He says: "Yes, hot day, but you come in and get rest." I says: "What you do inside?" He says: "Nothing to do, but empty house."

Upon Mr. Ellis' objection that the above is not competent, Mr. Retallick consents and asks more directly, his question as to who he went in the house with.

"I went in with Sing Kee. The man I just spoke about that I was talking to was Sing Kee. When I got into the house that man (meaning defendant) was not there. I go in there talk Sing Kee just a few words, and another man, his name Gee Lee, he come right in the house, he know me before too. He say, "Well, Gee King Quon, when you come in?" I say:

(Testimony of Gee King Quon.)

I just come about four days," and he says: "I want talk to you." He said "Sit down, you just wait a minute, I go over to water closet, I come back and talk to you." I say: "All right, I wait for him." Then he go right in the water closet. That was Gee Lee did that. And, after that, man come in the house and talk to Sing Kee. Sing Kee talk to him just a few words, then Sing Kee says: "You just sit down here, wait for me, I just come back a little while." I say: "All right, I wait for you." Then Sing Kee went out with old man. Afterwards Quong Duck comes in after me. He says: "Well, one of friends is in the house, he want see you." I say: "Well, I want see Gee Lee first before I go, you just wait a minute, then I go with you." Then he sat down, Quong Duck sat down there too. Then the officers come right in the house, in the room. I see them. I don't know what he do. Some had axes, and one is come into me and just hold me hard, and smell anything like that. I say: "What's the matter?" He say: I tell you anything about matter." He wouldn't tell me anything then, so then he hold my right hand, and take handcuff and lock me up, and take Quong Duck's left hand and lock it together, and then Gee Lee come out of water closet--that officer lock me up and Quong Duck up and just go after Gee Lee and bring Gee Lee up and lock my left hand on Gee Lee's right hand and then told me stand up, and just put his hands on my pocket, and over on Quong Duck's pocket and on Gee Lee's pocket."

(Testimony of Gee King Quon.)

"After officers handcuffed, then he told me sit down. I said "What you want?" He said "I going tell you after while." Then he told another man take the chair sit down in front of me and watch us. Then the rest of the men to in the room, and find for everything, and turn everything over and break everything up, and find something and go upstairs and look and find nothing in the room. And then they go down in basement and break everything, and come up, couldn't find anything; and do the worst; then they go out the front part of the house and break everything. He puts something, I don't know what he find, they take them in boxes. I couldn't see what they were doing in the front room, I was in this room there. Couldn't see outside what he done. I don't see what they find, but when he get Gee Lee, and Gee Lee ask "what's the matter, you going lock me up," he says "You just keep quiet. Don't you keep quiet, I just knock your head. I break your head," and Gee Lee talk to him, he hit him hard, and Gee Lee get cry. I told Gee Lee: "You just might as well -- No, not this man did that, the other man. The other man no come I don't see him today. That fellow he hit him. I thought the officers all --"

Here Mr. Ellis objects and same is consented to by Mr. Retallick, counsel for defendant and witness proceeds.

"No, they did not first take some keys from my pocket. I see him take keys after he got finished almost, and then he found out the key on the floor, and

(Testimony of Gee King Quon.)

he ask me: "That is your key?" I say no. He ask Quong Duck, he says no. He ask Gee Lee, he says no. Then he take the key around and try the door, and he come back, "This key no good, who belong to?" and nobody answer, then he put it in his pocket. I didn't see anything else in the room, nothing against the wall in the room. I never see anything the officers pick up. I never see with my eye. I am friend of defendant. I live in his hotel."

Upon

CROSS-EXAMINATION

conducted by counsel for the plaintiff, Mr. Ellis, witness testified as follows:

"Well, I did not see hole in the floor in this place. The floor is very clean, but this officer come and break everything all over the floor. I saw where they took the boards out of the floor, the hole in the floor. I see place where the China boy lay down around room, sure, and I see hole in the floor. I didn't see him pull something no, I see hole down basement all right. I don't see blocks on the platform. No blocks -- what you mean blocks, Oh, I know what you mean, blocks. Yes, yes, I see them blocks too. I did not see opium pipe there. I didn't see that pipe there, I never see that before there. That is lamp, I never see that before. They use that lamp all kind of way, any kind of use. Yes, you can light up and just look out, anything you can use it. I smell oil, nothing else. No, can't smell anything but oil there. I know

(Testimony of Gee King Quon.)

what opium is, I never smell any that night, never seen one other thing.

I know what that is too, it is used for smoking, but I don't see any in there. That is used for smoking opium. That—I don't know what that is, never see anything like that but it smell like opium. Don't know what that is used for, didn't see any there that night.

That stuff, I can't smell that. It is funny. I don't know what is in that. I have seen yenshee, but I don't see any that night because he never find anything in the room. That is all, I tell you. I wouldn't like at all. He never find anything. I saw. He never show me anything he find on that day. He never taken up any from that hole, never did. He never get anything in that drawer there. I saw him. Never taken out one thing against the law. Mean anything like that. Stuff like that, against the law. Opium against the law. I no see anyone smoke there that night. No smoke when officers came in. The door wide open, they come in before I know it. Never used the axe before he come in. He never broke the door. The door was open, come right in. He just take the axe and break the floors, break open part of house. He never touched the door. The door was never break. Door was open. Wide open, I go in there, wide open he come in, wide open. I saw the string, but string was not used that day. I don't know the bell. I didn't pay attention to bell. I see the string and the string it tied up, and door is open.

This other friend, Sing Kee: I always know him.

(Testimony of Frank Truax.)

He don't live there now. I don't see him. When I come in I talk to him. I see him. I know Quong Duck before too. I don't know what room is used for. When I come in, empty room that is all. Quong Duck come after me. Nobody in there when I went in, Just me Sing Kee, Sing Kee ask me to go in. I don't know what he use the platform for, I didn't pay any attention to that at all. I never been in opium joint in my life, never smoke in my life. The bed was there, not the kind we sleep on, I see the bed all right, but I don't know what he use that bed for. They are big, different. I don't know what these round blocks are for, I never use that kind of block myself. I don't know what he use them for. I never see one used. I no heard; I don't see what they are used for."

Witness dismissed, and

FRANK TRUAX,

called, sworn and examined as a witness on behalf of Defendant, testified as follows:

"I am Frank Truax, Chief of Police of the City of Fresno. I have been Chief for some years last past and am acquainted with Fresno's Chinatown. In particular I am acquainted with a place known as 1016 China Alley. In that place designated here on this map, that is the store room in front, back room, hallway here, small room on the side. I don't think the proportions of the building are right. The back room is not so large, probably, the front room is not quite

(Testimony of Frank Truax.)

so large; the middle room is the -- yes, the place had been used as an opium joint for a great many years."

Mr. Ellis objected to the question of the place being used as an opium joint for many years, as being leading and suggestive, but question was allowed and answered.

"On the 4th of July I raided the place, and was personally present. There was other officers with me."

Mr. Ellis, counsel for Plaintiff objects to this testimony as being wholly immaterial, two weeks or three weeks before the time of this raid, but court overrules with the statement that the jury will be glad to know that the officers regarded it as an opium joint.

"At that time one of the men arrested by me, was arrested as proprietor of the place. He was there then."

Mr. Ellis objects to last above as being incompetent, irrelevant and immaterial which objection is sustained. Witness proceeds:

"I don't know whether or not the place had been reopened after that time or not. At the time I arrested the men, personally, this defendant was not in there. He wasn't around there. He wasn't one of the men arrested. There were three or four got away, five or six but I didn't see him."

Upon

CROSS-EXAMINATION,

conducted by Mr. Ellis, counsel for Plaintiff, witness testifies as follows:

"I know this defendant by sight. I have seen him

(Testimony of Quong Duck.)

there a good many times in Chinatown. I don't know what his business is, I know his father pretty well. His father runs a store over there, a grocery store. I don't remember that there were two men charged with visiting an opium joint on July 23rd, under your jurisdiction July 23rd or 22nd. I don't remember about the case, no sir. I probably have on my books; I don't recall it, I didn't look it up. I don't know of my own knowledge. I knew this place was raided by government officers or Federal officers in the month of July after we had raided it in July. Also, I know it was raided twice in July, one time the federal officers raided it."

Frank Truax is dismissed and

QUONG DUCK

is called, sworn and examined as a witness in his own behalf, and testified as follows: through an interpreter.

(Albert H. Wong is duly sworn, to translate the English language into the Chinese and vice Versa.)

"My name is Quong Duck, the defendant in this case. I am at 1016 China Alley on July 26th, 1922, looking for somebody. I am looking for party of name of Gee King Quon. He is inside. He is Chinese witness that testified few minutes ago. I have a little conversation with them after I got in there. After this, little second, officers come right in, and I was arrested. I never notice any opium in there, or anything around the place. I didn't see anything inside

(Testimony of Quong Duck.)

the room there. The room, it is all kinds of cans and garbage around the place. I heard the noise from some officers searching the front portion of the house. I didn't see them. On that day I did not have the keys to that place in my pocket, I see them pick it up from the floor, it was picked up about a foot from where I stand. Yes, it was close to my feet. The officers searched me before those keys were found. They took some keys out of my pocket. Those keys were taken out towards the front of the building to try them and then turned back to me. The keys had a ring to it. There were keys taken from two Chinese there, and they were taken away towards the front of the building to be tried. They tried Gee King Quon's keys first, the party that was a witness. I am the last one. First one Gee Lee; next, party who was witness, and me last man to be tried. I am sure about that. I did have a hat with me, a straw hat."

Upon cross-examination, conducted by Mr. Ellis, counsel for Plaintiff, the witness testified as follows, to-wit:

"I did not *hand* up this straw hat in the room, I had it on my head all the time. All rest -- some had their hat on. I had my coat on, the rest had coat on just the same. I am sure my coat wasn't hanging on the wall with the hat. I don't know whose hat was hanging on the wall. I don't remember seeing an officer take the hat off the wall. Yes, I saw that opium pipe. It was not there that night. I didn't see it there. That is a pipe an opium pipe. I did not see those pieces

(Testimony of Quong Duck.)

of pipe there that night, never saw them any place and never saw that pipe there. Never saw any of that stuff that is here, or these lamps.

I can't smell that, I don't smell anything, and I don't know what that is used for, that wire like that. I never saw anyone clean an opium pipe with a wire like that. (looking into pipe) I see a drop in there, I don't know what it is. I don't know whether or not it is opium. It looks like opium, I know what opium is. I never saw anything like that yenshee there that night when I was arrested, the officers didn't show me any. The officer didn't show me anything at all, had it wrapped together. I didn't see him find that stuff in there."

Mr. Retallick, counsel for defendant objects to the following question that "Did he tell you-- did you know he found any there at all?" on the ground that it is incompetent, irrelevant and immaterial, and the objection was overruled.

"I know there was opium found there that day, or yenshee. I remember officer was searching, holding things up: I don't know what he find. I see him bring it out, all this stuff. He hold all these things, officer didn't show any of this stuff; all put in together. Did not see any opium or yenshee that the officer put all together in a box."

Mr. Retallick objects to the following question "How did you know there was any yenshee or any opium there then?" on the ground it has already been asked and answered. Mr. Ellis answered that it hadn't been

(Testimony of Quong Duck.)

answered, and the objection was overruled. The witness proceeds.

"The officers, I never notice any opium, what he have or not. I was arrested on account of things, what he had these things; found out was going to arrest me; it is against the law. Officer told me all these things are against the law and he was going to arrest me for that. Never see those keys, I see him pick them up off the floor. I don't know if these keys fit the place where I was. When I went in the door was open.

I live at 1511 Tulare Street, Fresno. I did not see anybody smoking there that night, or that afternoon when I was arrested and did not smell any opium in the place, when I was there. Sing Kee owned that place, and he was not there when I was there. I don't know where he is now. I did not tell the officer he was away, had gone to China. I did not tell him the "bossy man" had gone to China."

Here a recess is taken. After recess proceed without the interpreter.

"I had been in house about five minutes before officers came." Here the interpreter is called to explain the question "Did you know this door, this room which he was in had an extra thick door.

"Yes I noticed the door."

MR. ELLIS: Did you notice that the one leading into the room where you were was bigger than the outside door?

MR. RETALLICK: Just a minute. If Your

(Testimony of Quong Duck.)

Honor please, for the purpose of the record at least, I wish to interpose an objection to this line of questioning as incompetent, irrelevant and immaterial; along that line, I desire to suggest to the Court that the charge here is not visiting a place or resort for the purpose of using opium, but for having possession or receiving or buying or facilitating - -

THE COURT: How does that tend to prove anything.

MR. ELLIS: If he doesn't know anything about what was going on in this place, what he was doing, why he entered this place in which he was, he may not know anything about it; I am trying to find out. He says he didn't know this stuff was there until the officers showed it to him. I am trying to find out if he knew anything about the place.

THE COURT: I will overrule the objection. He may answer. (Question read)

Exception No. 4.

A. I don't know which was the bigger.

MR. ELLIS: Q. Did you see the rope that was attached to this door?

MR. RETALLICK: Same objection, if your Honor please, on the grounds previously stated, incompetent, irrelevant and immaterial, and for the same reason.

THE COURT: Objection overruled.

MR. RETALLICK: I understand I have to take an exception.

Exception No. 5.

THE COURT: All right, it may go in.

(Testimony of Quong Duck.)

MR. ELLIS: Q. The rope or cord? A. I don't know where that rope is.

THE COURT: Were you ever in that place before?

"I was never in that place before. That is the first time I was ever there. I have lived here in Fresno about ten years, down in Chinatown but was never in that place before. I go look for a man this time, the man that testified, did not go in there for anything else. When the officers came in I was sitting down. Sitting there well, because sitting down see what happened."

THE COURT: Proceed, Mr. Ellis.

MR. ELLIS: Did you know what kind of a place that was before you went there?

"I don't know what that place is. I had my hat on when these officers came in and had my coat on too.

MR. RETALLICK: Q. You have a lodging house nearby on Tulare Street, have you not?

A. Yes, sir.

"My business is running this lodging house, hotel. That was about one block from this place on China Alley."

MR. ELLIS: Q. Is that your place or your father's place you are talking about now? A. This lodging house?

Q. Yes. A. I own that place, not my father's place.

Q. Did you tell the officers at the time you were

(Testimony of Quong Duck.)

arrested it was your father's place, this lodging house was? A. I never had such answer; it is my own.

THE COURT: On the 4th day of July, did you hear about them arresting a lot of Chinamen for being in an opium place? A. I heard about it.

Q. Didn't you know where they were arrested? A. Sure. I just went in the place looking for my friend. I never knew place going to be raided.

Q. Didn't you hear about these Chinamen being arrested there on the 4th of July in an opium joint? A. I heard the place was been arrested, July time; after I heard my friends, the place never been running at all.

THE COURT: Anything further, gentlemen. Proceed.

MR. ELLIS: Q. Didn't you tell the officer in the afternoon when you were arrested, when he asked you where you lived, you said you lived over your father's place, over the lodging house?

MR. RETALLICK: I object to that, that has been asked and answered. I will make a further objection no proper foundation laid for the question. It is a new matter, not brought out on direct examination at all.

THE COURT: Objection overruled. (Question read)

A. No, I never said at all. Q. Never at any time said that? A. No. Q. To this officer right here? A. No.

THE COURT: That all with this witness?

(Testimony of Joseph Barrett.)

MR. RETALLICK: Q. What business is your father in? A. Groceries. Q. Where is that grocery store? A. at 1509 Tulare Street.

Q. How far away from your lodging house? A. Downstairs.

Q. Just downstairs? A. Yes.

Q. Is that lodging house in your name, by the city license? A. Yes.

Q. You understand what I mean by city license? A. Yes.

MR. RETALLICK: That is all.

JOSEPH BARRETT,

called, sworn and examined as a witness on behalf of the defendant, testified as follows:

"My name is Joseph Barrett. I work for the Pacific Gas & Electric Company, and have been working for them for about three years. I was working for them during the month of July, 1922. In connection with my duties with the gas company, I have something to do with the books of account, showing to whom gas is charged for various localities. The gas at the premises designated as 1016 China Alley was charged to Sing Kee, in the month of July, 1922."

Upon cross-examination conducted by Mr. Ellis, counsel for plaintiff, said witness testified as follows:

"I do not know Sing Kee.

THE COURT: I thought the defendant wasn't going to leave here any more; Mr. Retallick, you tell that defendant - - -

(Testimony of Andrew Roberts.)

MR. RETALLICK: I have already explained to him, it would look like I was endeavoring to impose on the court.

THE COURT: If he don't stay inside the bar, I will order him into custody and see that he stays here.

MR. ELLIS: Q. Do you know this man Sing Kee? A. No, sir I do not.

MR. ELLIS: That is all.

THE COURT: Wait a minute. Who collects for the gas? A. We have collectors who take care of that.

Q. You don't know who the collectors are? A. I would be able to tell during that month who collected the bills there.

Q. All you know is what you see on the books? A. Yes, sir. Q. That all you know about it? A. Yes, sir.

Q. Did you ever see this Sing Kee? A. Not to my knowledge.

MR. ELLIS: I ask the testimony be stricken on the ground it is immaterial.

THE COURT: Let it be stricken.

MR. RETALLICK: That is all. That is our case.

— — — O — — —

ANDREW ROBERTS,

Recalled as a witness in rebuttal, having been duly sworn, testified as follows:

MR. ELLIS: Q. When you entered the place where the defendant was arrested, did he have his

(Testimony of Andrew Roberts.)

hat and coat on? A. As I have already stated, he had his hat - -

MR. RETALLICK: I object to that, it is not rebuttal, it is repetition of the testimony in chief.

THE COURT: I don't think it is rebuttal testimony.

MR. ELLIS: I mean, your Honor, only as to the coat; this witness did not speak of the coat; he did testify about the hat, we may withdraw that, he has testified to that.

Q. Did he have his coat on? A. His coat was hanging next to his hat on the wall, as I entered the place, he was in his shirt sleeves; it was very hot on the afternoon of July 26th. He was the only one in the place with his hat off at the time. The other two Chinese had their hats on and coats on.

MR. RETALLICK: No question.

(The case was argued to the jury by respective counsel, after which the instructions of the Court were given to the jury; they thereupon retired to consider of their verdict, later returning with a verdict of guilty.)

The jury returns to the court room at 4:00 P. M. and the following proceedings occur:

THE COURT: Gentlemen of the jury, have you agreed upon a verdict?

THE FOREMAN: We have not, your Honor.

THE COURT: How does the jury stand; I want to know just how you are divided, not as to your vote whether guilty or not.

THE FOREMAN: The jury stands eight to four.

THE COURT: I don't understand, gentlemen of the jury, why a verdict has not been promptly returned in this case. You may retire to your chambers; I hope you will compose your differences, there ought to be a verdict reach in this case. Anything I can do to assist you, I will do it.

Whereupon the jury retires at 4:05 P. M. for further deliberation and at 4:20 P. M. return with the verdict of not guilty on the first count and guilty as charged in the second count of the indictment.

Exceptions 9 and 10.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION.

THE PEOPLE OF THE UNITED)
STATES OF AMERICA,)
	Plaintiff.)
)
vs.)
Quong Duck,)
	Defendant.)

x

It is hereby stipulated that the foregoing Bill of Exceptions, as amended, may be allowed and settled by the Court.

Dated: March 16 1923.

Joseph C. Burke

U. S. DISTRICT ATTORNEY.

R. G. Retallick

M. G. Gallaher

ATTORNEY FOR DEFENDANT.

The foregoing Bill of Exceptions is certified to and allowed as correct this 16 day of March, 1923.

Trippet

JUDGE OF THE U. S. DISTRICT COURT.

[Endorsed]: 668 Cr. IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION. THE PEOPLE OF THE UNITED STATES OF AMERICA, Plaintiff. vs QUONG DUCK, Defendant. Engrossed AMENDED BILL OF EXCEPTIONS R. G. RETALLICK ATTORNEY-AT-LAW BRIX BUILDING FRESNO, CALIFORNIA. FILED Mar 16 1923 Chas. N. Williams, Clerk Murray E. Wire Deputy

IN THE UNITED STATES DISTRICT COURT,
IN AND FOR THE NORTHERN DIVISION OF
THE SOUTHERN DISTRICT.

UNITED STATES OF AMERICA,)	
	Plaintiff,)
vs.)	ASSIGNMENT
QUONG DUCK,)	<u>OF ERRORS.</u>
Defendant.)	

Now comes Quong Duck, the plaintiff in error, and in connection with his petition for a Writ of Error, says that in the record, proceedings, and judgment aforesaid, error has intervened to his prejudice, to-wit:

1. The Honorable Oscar A. Trippett, Judge of the Court of the United States aforesaid, erred in overruling the objection of the defendant by his counsel to the introduction of a certain suit-case and contents

which was, over the objection of the defendant, received in evidence on the trial of this action, and was and is marked "Government Exhibit No. 1."

2. The said Honorable Oscar A. Trippett, Judge of said District Court of the United States erred in admitting the testimony and evidence of witness Andrew Roberts that he, the said witness, did not see any food except a little bit of rice on the sink in the house in which the defendant, Quong Duck was arrested, to the admission of which evidence the defendant objected.

3. That the Honorable Oscar A. Trippett, Judge of said District Court, erred in overruling the objection of defendant's counsel to the question propounded to witness Roberts as follows: "Now, was there anything on the outside of these openings, fastenings of any kind to indicate there was anything in there?"

4. That the Honorable Oscar A. Trippett, Judge of said District Court, erred in overruling the objection of the defendant by his counsel to the question propounded to Quong Duck, the defendant, "Did you notice that the one leading into the room where you were was bigger than the outside door?"

5. That the said Oscar A. Trippett, Judge of said District Court, erred in overruling the objection of defendant to the question propounded by the United States Attorney to the witness Quong Duck, defendant, "Did you see the rope that was attached to this door?"

6. That the Honorable Oscar A. Trippett, said Judge of said District Court, erred in stating to the jury when the said jury was first returned into court

and reported that said jury could not agree upon a verdict, the following, "How does the jury stand; I want to know just how you are divided, not as to your vote whether guilty or not?"

7. That said Honorable Oscar A. Trippett, said Judge of said District Court erred in stating to the jury at the same time as specified in assignment No. 6 hereof, "I don't understand, gentlemen of the jury, why a verdict has not been promptly returned in this case. You may retire to your chambers; I hope you will compose your differences, there ought to be a verdict reached in this case."

8. That said Honorable Oscar A. Trippett, Judge of said District Court erred in submitting the question of the guilt or innocence of the defendant, Quong Duck, upon the first count in the indictment herein, to the jury.

9. That said Honorable Oscar A. Trippett, Judge of said District Court aforesaid, erred in submitting to the jury the question of the guilt or innocence of the defendant, Quong Duck upon the second count in the indictment.

10. That the said Honorable Oscar A. Trippett, Judge of said District Court aforesaid, erred in pronouncing sentence and judgment upon the defendant Quong Duck, upon the verdict returned by the jury of guilty upon the second count.

11. That there was no evidence whatsoever introduced on the trial of said action that proved or had any tendency whatever to prove that the defendant, Quong Duck, had possession or control of or knew of

the existence of any opium or opium derivatives found by the Federal officers who arrested the said defendant, and there was no evidence whatsoever proving or having any tendency whatsoever to prove that the defendant had any control, charge or domination of or interest in the building in which the said defendant was arrested, and there was no evidence proving or tending to prove that the defendant Quong Duck knew of the existence of any opium or opium derivatives procured in said building herein mentioned, by the officers who arrested the defendant, or knew of the existence of any opium or opium derivatives at all, and there was no evidence proving or tending to prove that the defendant Quong Duck did either facilitate the transportation or facilitate the concealment or facilitate the sale of opium prepared for smoking, and of yen shee, or of either of said substances; and there was no evidence proving or tending to prove that Quong Duck had any connection or relation to or with the opium or yen shee or either thereof that was in said building in which said defendant was arrested, and there is no evidence proving or tending to prove that the defendant, Quong Duck, knew of the existence or the concealment of said opium or said derivatives thereof, and the uncontradicted evidence of the defendant, Quong Duck, showed that he did not know of the existence or the concealment, or the transportation, or the sale of said opium and opium products, or of either thereof or of any opium or opium product, and said uncontradicted evidence shows that the defendant did not know of the transportation, or

the concealment, or the sale of any opium or opium derivatives whatsoever. That the evidence, without contradiction, shows that the said building where the said Quong Duck, the defendant herein was arrested, had been a short time prior thereto, conducted as a place where opium was sold and smoked by a person unknown to the defendant herein, and with whom the defendant herein had no relation or connection whatsoever, and the evidence therefore shows that all opium and derivatives thereof concealed in said place were there concealed by said other person and not by the defendant Quong Duck.

M. G. Gallaher

R. G. Retallick

Attorneys for Petitioner.

Approved as to form, as provided in rule 45.

Attorney

[Endorsed]:

No. 668 Crim. Nor Div. IN THE UNITED STATES DISTRICT COURT, IN AND FOR THE NORTHERN DIVISION OF THE SOUTHERN DISTRICT. United States of America, Plaintiff, vs. Quong Duck, Defendant. ASSIGNMENT OF ERRORS. Copy of the within assignment of errors received this 29th day of Dec. 1922 Herbert N. Ellis Special Asst. U. S. Atty. FILED DEC. 29 1922 Chas. N. Williams, Clerk GALLAHER, SIMPSON & HAYS ATTORNEYS AT LAW MATTEI BUILDING FRESNO, CALIFORNIA.

IN THE UNITED STATES DISTRICT COURT,
IN AND FOR THE NORTHERN DIVISION OF
THE SOUTHERN DISTRICT.

UNITED STATES OF AMERICA,)
	Plaintiff,)
vs.)
QUONG DUCK,)
	Defendant.)

PETITION FOR WRIT OF ERROR FOR
SUPERSEDEAS AND BAIL.

TO THE HONORABLE OSCAR A. TRIPPETT,
JUDGE OF THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA:

Now comes Quong Duck, the defendant in the above entitled cause, and feeling himself aggrieved by the verdict of the jury and the judgment of the District Court of the United States for the Southern District of California, entered on the 4th day of December, 1922, hereby petitions for an order allowing him, said defendant, to prosecute a writ of error from the United States Circuit Court of Appeals of the Ninth Circuit, to the District Court the United States, for the Southern District of California; but said writ of error may be made a supersedeas, and that your petitioner be released on bail in an amount to be fixed by the Judge thereof, pending the final disposition of said

writ of error. Assignment of *erros* is filed with this petition.

Quong Duck

Petitioner. by his attorneys

M. G. Gallaher

R. G. Retallick

Attorneys for Petitioner.

[Endorsed]:

No 668 Crim. Nor. Div IN THE UNITED STATES DISTRICT COURT, IN AND FOR THE NORTHERN DIVISION OF THE SOUTHERN DISTRICT. United States of America, Plaintiff, vs. Quong Duck, Defendant. PETITION FOR WRIT OF ERROR FOR SUPERSEDEAS AND BAIL. Copy of the within petition received this 29th day of Dec. 1922 Joseph C. Burke U. S. Atty by Herbert N. Ellis Special Ass't U. S. Atty. FILED DEC 29 1922 Chas. N. Williams, Clerk GALLAHER, SIMPSON & HAYS ATTORNEYS AT LAW MATTEI BUILDING FRESNO, CALIFORNIA

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DIVISION OF THE SOUTHERN DISTRICT.

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

QUONG DUCK,

Defendant.)

) Order Allowing

) Writ of Error.

Upon motion of M. G. Gallaher, Esq., and R. G. Retallick, Esq., attorneys for the defendant, Quong

Duck, and upon filing the Petition for a Writ of Error and Assignment of Errors, it is ordered that a Writ of Error be and same hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the order and judgment heretofore entered; that pending the decision upon said Writ of Error the supersedeas prayed for by the defendant in his petition for Writ of Error herein is hereby allowed and the defendant, Quong Duck, is ordered admitted to bail upon said Writ of Error in the sum of Twenty five Thousand dollars (\$25,000). Dated Dec. 29, 1922.

Oscar A. Trippet

Approved as to form, as provided in rule 45, Joseph C. Burke U. S. Attorney by Herbert N. Ellis Special asst. Attorney.

[Endorsed]:

668 Cr. N. D. IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DIVISION OF THE SOUTHERN DISTRICT. UNITED STATES OF AMERICA, Plaintiff, vs. QUONG DUCK, Defendant. Order Allowing Writ of Error. FILED DEC 29 1922 CHAS. N. WILLIAMS, Clerk By W. J. Tufts. Deputy M. G. Gallaher and R. G. Retallick, Attorneys for Defendant.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA NORTHERN DIVISION.

UNITED STATES OF AMERICA	:
	Plaintiff
-vs-	:
QUONG DUCK	:
	Defendant.
	:
	BOND FOR
	COSTS

KNOW ALL MEN BY THESE PRESENTS, That we, Quong Duck as principal and Fook Kee and Cuyler Wong as sureties, are held and firmly bound unto the United States of America in the full and just sum of Two Hundred and Fifty (250) Dollars, to be paid to the said United States of America, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents:

Sealed with our seals and dated this 11th day of April, in the year of our Lord, One Thousand Nine Hundred and Twenty Three.

Whereas lately in the 4th day of December, 1922, at the November term of the District Court of the United States for the Southern District of California, Northern Division, in a cause pending in said Court, between the United States of America, plaintiff, and Quong Duck, defendant, a judgment and sentence was rendered against said Quong Duck, and whereas, said Quong Duck thereafter obtained a writ of error directed to the said United States of America and the United States Attorney for the Southern District of

California before the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America and to the United States Attorney for the Southern District of California citing and admonishing the United States of America and the said United States Attorney to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, pursuant to the terms and at the time fixed in said citation;

Now, the condition of the above obligation is such, That if the said Quong Duck shall prosecute said proceedings under said writ of error to effect, and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void, else to remain and be in full force and virtue.

x Quong Duck

Principal.

Fook Kee

Cuyler Wong—

[Seal]

Sureties.

Signed, sealed and acknowledged before me this 11 day of April 1922.

Samuel F. Hollins

United States Commissioner.

Fook Kee and Cuyler Wong being duly sworn, each for himself, depose and say: that he is a resident and freeholder in the Southern District of California,

Northern Division, and is worth in property situated therein, the above mentioned sum of \$250.00 over and above all his just debts and liabilities, exclusive of property exempt from execution.

x Fook Kee

Cuyler Wong—

Subscribed and sworn to before me this 11 day of April, 1923.

[Seal]

Samuel F. Hollins

United States Commissioner.

Examined and recommended for approval as provided in Rule 29.

R. G. Retallick

Attorney

I hereby approve the foregoing bond

Dated the 16 day of Apr 1923

Trippet

Judge or Clerk

[Endorsed]:

#668 Crim In the District Court of the United States, Southern District of California, Northern Division. UNITED STATES OF AMERICA Plaintiff -vs- QUONG DUCK Defendant. Bond for Costs. FILED APR 16 1923 CHAS. N. WILLIAMS, Clerk Chas. V. Rude Deputy Approved as to form R B Camarillo Asst U. S. Atty. RETALLICK & TUTTLE ATTORNEYS-AT-LAW Cory Building Fresno, California

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA NORTHERN DIVIS-
ION

UNITED STATES OF AMERICA,) No. 668 Crim .	
Plaintiff,	: BOND PEND-
-vs-) ING DECIS-
	: ION UPON
QUONG DUCK,) WRIT OF
Defendant.	: ERROR

KNOW ALL MEN BY THESE PRESENTS:
That I, Quong Duck, of the County of Fresno, State
of California, as principal, and Sue Sing Lung and
Jee Fong of the County of Fresno, State of Califor-
nia, as sureties, are held and firmly bound unto the
United States of America in the full and just sum of
Twenty-Five Thousand (\$25,000.00) Dollars, to be
paid to the United States of America, to which pay-
ment well and truly made we bind ourselves, our
heirs, executors, and administrators, jointly and sepa-
rately by these presents.

Sealed with our seals and dated this 30th day of
December in the year of our Lord, One thousand nine
hundred and twenty-two.

Whereas, lately on the 4th day of December, 1922,
at the November term of the District Court of the
United States for the Southern District of California,
Northern Division, in a cause pending in said Court,
between the United States of America, Plaintiff, and
Quong Duck, Defendant, a judgment and sentence was
rendered and entered against said Quong Duck, and

whereas said Quong Duck thereafter obtained a Writ of Error directed to the United States of America and the United States Attorney for the Southern District of California before the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America and to the United States Attorney for the Southern District of California citing and admonishing the United States of America and said United States Attorney to be and appear in the United States Circuit Court of Appeals for the Ninth circuit, at San Francisco, California, pursuant to the terms and at the time fixed in said citation, which citation has been fully served.

Whereas the said Quong Duck has been admitted to bail pending decision upon said writ of error in the sum of Twenty-Five Thousand (\$25,000.00) Dollars.

Now, therefore, the condition of said obligation is such, that if the said Quong Duck shall appear either in person or by his attorneys in the United States Circuit Court of Appeals for the Ninth circuit when said cause is reached for argument or when required by law or by rule of said court and from day to day thereafter in said court until said cause shall be finally disposed of and shall abide by and obey the judgment and orders made by the said Court of Appeals in said cause and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct, if the judgment and sentence against him shall be affirmed by said United States Circuit Court of Appeals and if the said Quong Duck

shall appear for trial in the District Court of the United States for the Southern District of California, Northern Division, on such day or days as may be appointed for a retrial of said cause by said District Court and abide by and obey all orders made by said District Court, provided the judgment and sentence against him shall be reversed by the said Court of Appeals, then the obligation to be void; otherwise to remain in full force, virtue and effect.

Quong Duck

Principal.

Sue Sing Lung

Jee Fong

Sureties.

[Seal] Signed, sealed and acknowledged before me
this 30th day of December, 1922.

Samuel F. Hollins

United States Commissioner.

Sue Sing Lung and Jee Fong being duly sworn each
for himself deposes and says that he is a resident and
freeholder in the Southern District of California,
Northern Division, and is worth in property situated
therein, the above sum of \$25,000.00, over and above
all his just debts and liabilities, exclusive of property
exempt from execution.

Sue Sing Lung

Jee Fong

Sureties

[Seal] Subscribed and sworn to before me this
30th day of December

Samuel F. Hollins

United States Commissioner.

Examined and recommended for approval as provided in Rule 29.

Richard G. Retallick

Attorney

I hereby approve the foregoing bond.

Dated the 3rd day of Jan, 1923

Trippet

Judge.

Approved as to form.

Joseph C. Burke

United States Attorney

Herbert N. Ellis

Special Assistant U. S. Attorney.

UNITED STATES OF AMERICA)
) ss.
SOUTHERN DISTRICT OF CALIFORNIA)

Sue Sing Lung being duly sworn deposes and says that he owns the following property in the Southern District of California:

160 Acre *vinyard* and orchard located five miles north-west of the City of Tulare, in Tulare County, California, planted as follows:

25 acres Thompson seedless grapes 5 to 10 yrs. old
 110 acres of Muscat grapes—15 to 20 yrs old, 25
 acres peaches, apricots and nectarines 6 to 10 year old.

This Property is valued at \$110,000.00 and is free
 of encumbrances. 1922 crop valued at \$25,000.00

Sue Sing Lung

Subscribed and sworn to before me this the 30th day
 of December, 1922.

[Seal]

Samuel F. Hollins

UNITED STATES COMMISSIONER.

UNITED STATE OF AMERICA)
) ss.
 SOUTHERN DISTRICT OF CALIFORNIA)

Jee Fong, being duly sworn deposes and says that he
 owns the following property in the Southern District
 of California:

4 lots and building in Del Rey, California. No
 mortgages: Value \$10,000.00

5 lots and Building on Tulare St., Fresno, Cali-
 fornia, no mortgages: Value \$15,000.00

1-2 interest in the Quong Tai Lung Store at 1507
 Tulare St., Fresno, California. Value 10,000.00

\$35,000.00

Jee Fong

Subscribed and sworn to before me this 30th day
 of December 1922.

[Seal]

Samuel F. Hollins

United States Commissioner.

[Endorsed]:

No. 668 Crim IN THE DISTRICT COURT OF
THE UNITED STATES FOR THE SOUTHERN
DISTRICT of CALIFORNIA NORTHERN DI-
VISION UNITED STATES OF AMERICA Plain-
tiff vs. QUONG DUCK Defendant. BOND PEND-
ING DECISION UPON WRIT OF ERROR Quong
Duck, Def. 1511 Tulare St., Fresno, Cal. Sue Sing
Lung, Surety, Fowler, Cal. Jee Fong, Surety, 1507
Tulare St., Fresno, Cal. R. G. Rettalick, Atty. Brix
Bldg., Fresno, Calif. FILED JAN 3—1923 CHAS.
N. WILLIAMS, Clerk By Murray E Wire Deputy

UNITED STATES OF AMERICA

District Court of the United States
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA.	}	CLERK'S OFFICE
Plaintiff,		
-vs-	}	No. 668-Crim.
QUONG DUCK,		No. Div.,
Defendant,	J	PRÆCIPE

TO THE CLERK OF SAID COURT:

Sir:

Please issue a transcript of the record in the above
numbered case and include therein the following
papers: Writ of Error, Citation, Judgment Roll, Bill
of Exceptions, Assignments of Error, Petition for
Writ of Error, Order allowing Writ of Error,

Supersedeas Bond, Bond for costs on Appeal and this Praecipe.

Respectfully,

R. G. Retallick

B

[Endorsed]:

Original No. 668-Crim No. Div. U. S. District Court SOUTHERN DISTRICT OF CALIFORNIA UNITED STATES OF AMERICA, Plaintiff, -vs- QUONG DUCK, Defendant, PRÆCIPE FOR TRANSCRIPT OF RECORD. Rec'd copy of the within this 10th day of April, 1923. Joseph C. Burke, Robert B Camarillo U. S. Atty. FILED APR 10 1923 CHAS. N. WILLIAMS, Clerk. Chas. V. Rude Deputy

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN
DIVISION.

United States of America, Plaintiff,	}	No. 668 Crim. N. D.
vs.		
Quong Duck, Defendant.		

I, CHAS. N. WILLIAMS, Clerk of the United States District Court of the Southern District of California, do hereby certify the foregoing volume containing 74 pages, numbered from 1 to 74 inclusive, to be the Transcript of Record on Writ of Error in the above entitled cause, as printed by Plaintiff in Error and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the writ of error, citation, judgment roll, bill of exceptions, assignments of error, petition for writ of error, order allowing writ of error, supersedeas bond, bond for costs on appeal and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Writ of Error amount to and that said amount has been paid me by the Plaintiff in Error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of Cali-

fornia, Southern Division, this 24th day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-three, and of our Independence the One Hundred and Forty-seven.

CHAS. N. WILLIAMS,
Clerk of the District Court of the
United States of America, in and
for the Southern District of Cali-
fornia.

By

Deputy.